

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs, September 3, 2009

**BANK OF AMERICA, N.A., v. WILLIAM L. VAUGHN**

**Direct Appeal from the Circuit Court for Williamson County  
No. 08653     Hon. Timothy L. Easter, Circuit Judge**

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**No. M2009-00046-COA-R3-CV - Filed November 16, 2009**

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Plaintiff filed this action for debt against defendant in Sessions Court. The Sessions Court Judge entered a Judgment for plaintiff for the amount of the debt, plus attorney's fees and costs. On appeal, the Circuit Court affirmed the Judgment of the Sessions Court. Defendant has appealed, arguing that the statute of limitations had run on the contracted debt. We vacate the Judgment of the Trial Court and remand with instructions for the Trial Court to hear further evidence on the issue of the statute of limitations defense.

**Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Vacated and Remanded.**

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

William L. Vaughn, Wartburg, Tennessee, *pro se*.

John R. Cheadle, Jr., and Mary K. Barnard, Nashville, Tennessee, for Appellee, Bank of America, N.A.

**OPINION**

Plaintiff, Bank of America, filed in General Sessions Court a claim against defendant, William Vaughn, a prisoner at Morgan County Correctional Complex, alleging that defendant owed a debt of \$6,961.88, plus attorneys fees of \$1,740.47, for a total of \$8,702.35 plus court costs, etc.

The Court Summons was filed on July 28, 2008, and was served on defendant in jail on August 6, 2008. Plaintiff filed a sworn account, establishing the amount owed, and defendant then filed a Motion to Dismiss Civil Action, asserting the defense that the statute of limitations had run, and that he had been incarcerated since 2001, and had made no payments on the account during that time. Judgment was entered for plaintiff on September 15, 2008, for \$11,902.09, and the matter was appealed to the Circuit Court. A hearing was set in Circuit Court on December 8, 2008, and defendant filed an "Affidavit of Facts and Argument for Appeal", asserting that the six year statute of limitations applicable to this contract had already run before the lawsuit was filed.

The Circuit Judge entered a Final Judgment affirming the General Sessions judgment in favor of plaintiff. The Order states that the Court considered plaintiff's sworn affidavit, statements of plaintiff's counsel, and defendant's affidavit.

On appeal, defendant claimed the Trial Court erred in failing to dismiss the claim based upon the statute of limitations.

This was a claim brought on a sworn account, and plaintiff filed a notarized affidavit establishing that defendant owed \$6,416.00 through October 2007. Such actions are authorized pursuant to Tenn. Code Ann. § 24-5-107, which states:

(a) An account on which action is brought, coming from another state or another county of this state, or from the county where suit is brought, with the affidavit of the plaintiff or its agent to its correctness, and the certificate of a state commissioner annexed thereto, or the certificate of a notary public with such notary public's official seal annexed thereto, or the certificate of a judge of the court of general sessions, with the certificate of the county clerk that such judge is an acting judge within the county, is conclusive against the party sought to be charged, unless that party on oath denies the account or except as allowed under subsection (b).

(b) The court shall allow the defendant orally to deny the account under oath and assert any defense or objection the defendant may have. Upon such denial, on the plaintiff's motion, or in the interest of justice, the judge shall continue the action to a date certain for trial.

Defendant argues that he filed a response in General Session Court establishing that he had not made any payments on this account in since his incarceration in 2001, and the statute of limitations applies to this case. Plaintiff admits the statute requires a showing that plaintiff defaulted within six years of the complaint being filed, and argues that it provided proof at trial that it last received a payment from defendant on January 13, 2003, and that its claim filed in 2008 was thus timely, as it was filed within six years from receipt of last payment.

The record in this case only establishes that defendant owed a debt to plaintiff, the amount owed, and the account number. The sworn account does not state the date of defendant's last payment, however, and that information is not contained in the record. In fact, plaintiff's brief states in the Statement of Facts that defendant's last payment was on September 13, 2003 (citing to the sworn account, which does not contain such information), and then in the argument section states that his last payment was on January 13, 2003, pursuant to the "proof at trial".

The Order entered by the Circuit Court merely states that the Court considered the sworn account, a statement of plaintiff's counsel, and defendant's affidavit, but does not state that any proof was introduced. Accordingly, as the defendant argues, it is not possible to glean from the record when his last payment was made. Based upon his assertion in his Motion that he has been incarcerated since 2001 and has made no payments since that time, there is no basis to establish that the statute of limitations had not run. We therefore vacate the Judgment of the Trial Court and remand for further proof on the issue of the running of the statute of limitations. The cost of the appeal is assessed to plaintiff.

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HERSCHEL PICKENS FRANKS, P.J.